

Senate Study Bill 1076

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to public assistance benefits received by persons
2 who were not entitled or eligible to receive the benefits,
3 providing criminal and civil penalties, and appropriating
4 certain penalties received.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 1314DP 80
7 rh/pj/5

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1 1 Section 1. NEW SECTION. 10A.404 CIVIL PENALTIES AND
1 2 PAYMENT OF INVESTIGATION COSTS == PRESUMPTION OF LIABILITY ==
1 3 LIMITATION OF ACTIONS.
1 4 1. For the purposes of this section, unless the context
1 5 otherwise requires, "benefit" means a service, payment,
1 6 merchandise, or other assistance. In addition to any other
1 7 penalty or payment amount under law, a person is liable for
1 8 the civil penalty and payment of the investigation costs
1 9 listed in subsection 2 if the person receives a benefit to
1 10 which the person was not entitled or for which the person was
1 11 not eligible under any of the following chapters administered
1 12 by the state:
1 13 a. Chapter 234, relating to child and family services.
1 14 b. Chapter 237A, relating to child care.
1 15 c. Chapter 239B, relating to the family investment
1 16 program.
1 17 d. Chapter 249, relating to the state supplementary
1 18 assistance program.
1 19 e. Chapter 249A, relating to the medical assistance
1 20 program.
1 21 2. a. If the person liable under subsection 1 was the
1 22 program benefit recipient of the benefit to which the person
1 23 was not entitled or eligible under any of the chapters listed
1 24 in subsection 1 and the total dollar amount of such benefit
1 25 received was proven to be more than one thousand dollars, the
1 26 person is liable for both of the following amounts:
1 27 (1) A civil penalty of not more than three times the total
1 28 dollar amount of the benefit to which the person was not
1 29 entitled or eligible to receive.
1 30 (2) Not more than five hundred dollars of the costs
1 31 incurred by the department in investigating the matter.
1 32 b. If the person liable under subsection 1 was a provider
1 33 of service, merchandise, or other assistance under any of the
1 34 chapters listed in subsection 1, the person is liable for both
1 35 of the following amounts:
2 1 (1) A civil penalty. If a provider received benefits to
2 2 which the provider was not entitled with a proven total dollar
2 3 amount of twenty thousand dollars or less, the minimum civil
2 4 penalty shall be five thousand dollars. If the provider
2 5 received benefits to which the provider was not entitled with
2 6 a proven total dollar amount in excess of twenty thousand
2 7 dollars, the civil penalty shall be at least twenty-five
2 8 percent of the amount of the benefits to which the provider
2 9 was not entitled. Notwithstanding the proven total dollar
2 10 amount of benefits to which the provider was not entitled, the
2 11 court ordering payment of this civil penalty may order payment
2 12 of a maximum penalty not to exceed three times the proven
2 13 total dollar amount of benefits to which the provider was not
2 14 entitled.
2 15 (2) Not more than five thousand dollars of the costs
2 16 incurred by the department in investigating the matter.
2 17 3. Liability for the civil penalty and payment of costs of
2 18 investigation under subsections 1 and 2 is separate from and
2 19 cumulative with any other administrative, civil, or criminal
2 20 penalty or payments ordered under federal or state law or
2 21 regulation. Institution of a criminal proceeding is not a
2 22 prerequisite or condition for an action to enforce subsections

2 23 1 and 2.
2 24 4. Liability for the civil penalty and payment of costs of
2 25 investigation under subsections 1 and 2 may be established by
2 26 any of the following means:
2 27 a. Upon a criminal conviction, entry of a guilty plea, or
2 28 entry of a finding of guilt in a state or federal prosecution
2 29 that is directly related to a benefit administered by the
2 30 state under a chapter listed in subsection 1, the sentencing
2 31 court may order payment in accordance with subsections 1 and
2 32 2. However, if the sentencing court fails to order the
2 33 payment, a civil proceeding to enforce payment may be
2 34 instituted in accordance with subsection 5.
2 35 b. Upon entry of a civil judgment or confession of
3 1 judgment in a state or federal court proceeding that is
3 2 directly related to a benefit administered by the state under
3 3 a chapter listed in subsection 1, the court entering judgment
3 4 may order payment in accordance with subsections 1 and 2.
3 5 However, if the court ordering judgment fails to order the
3 6 payment, a civil proceeding to enforce payment may be
3 7 instituted in accordance with subsection 5.
3 8 c. Upon an administrative finding in a state or federal
3 9 proceeding that is directly related to a benefit administered
3 10 by the state under a chapter listed in subsection 1, a civil
3 11 proceeding to enforce payment may be instituted in accordance
3 12 with subsection 5.
3 13 5. A civil proceeding to enforce payment under this
3 14 section shall be instituted in the district court of the
3 15 county in which the person received under a chapter listed in
3 16 subsection 1 a benefit to which the person was not entitled or
3 17 for which the person under rule was not eligible. The office
3 18 of the attorney general or the county attorney may institute
3 19 the civil proceeding, which may commence after or at the same
3 20 time as any related state or federal criminal, civil, or
3 21 administrative proceeding directly related to a benefit under
3 22 a chapter listed in subsection 1 to which the person was not
3 23 entitled or eligible to receive.
3 24 6. A rebuttable presumption arises that a person is liable
3 25 for the civil penalty and payment of costs of investigation
3 26 under subsections 1 and 2. The presumption may only be
3 27 rebutted by clear and convincing evidence that the person was
3 28 properly entitled to or eligible to receive such benefit under
3 29 a chapter listed in subsection 1. The rebuttable presumption
3 30 arises after any of the following occurs in a state or federal
3 31 criminal, civil, or administrative proceeding that is directly
3 32 related to payment or collection of payments received by a
3 33 person for a service or benefit administered by the state
3 34 under a chapter listed in subsection 1:
3 35 a. Entry of a criminal conviction, plea of guilty, or
4 1 finding of guilt.
4 2 b. Entry of a judgment or confession of judgment in a
4 3 civil proceeding.
4 4 c. Entry of an administrative finding adverse to the
4 5 person or establishing the person's liability.
4 6 7. The departments of human services and inspections and
4 7 appeals shall cooperate in adopting rules pursuant to chapter
4 8 17A as necessary for administration, collection, and
4 9 allocation of civil penalties described in subsection 2. The
4 10 department of inspections and appeals shall adopt rules
4 11 pursuant to chapter 17A as necessary for the administration,
4 12 collection, and allocation of costs of investigation described
4 13 in subsection 2.
4 14 8. An action under this section shall not be instituted
4 15 more than five years after the date the state discovered that
4 16 a person received a benefit under a chapter listed in
4 17 subsection 1 to which the person was not entitled or for which
4 18 the person under rule was not eligible.
4 19 9. This section shall not be applicable in circumstances
4 20 when a person, through no fault of their own, receives a
4 21 benefit or a portion thereof to which the person or provider
4 22 was not entitled or eligible for, and when the benefit or a
4 23 portion thereof was the result of error, improper application,
4 24 interpretation, or implementation of the program rules or
4 25 policies specific to the chapter under which the benefits were
4 26 received.
4 27 Sec. 2. NEW SECTION. 234.13A CIVIL PENALTIES == PAYMENT
4 28 OF INVESTIGATION COSTS.
4 29 If a person receives under this chapter a service, payment,
4 30 merchandise, or other assistance to which the person was not
4 31 entitled or for which the person was not eligible, the
4 32 person's liability for civil penalties and investigation costs
4 33 shall be determined in accordance with section 10A.404.

4 34 Sec. 3. NEW SECTION. 237A.14 FRAUDULENT PRACTICES ==
4 35 RECOVERY OF OVERPAYMENTS.

5 1 1. An individual who receives, or attempts to receive, or
5 2 aids or abets an individual in receiving, by means of a
5 3 willfully false statement or representation, by knowingly
5 4 failing to disclose a material fact, or by impersonation, or
5 5 through any fraudulent device, any assistance, payment, or
5 6 other benefit under this chapter to which the individual is
5 7 not entitled, commits a fraudulent practice.

5 8 2. An individual who commits a fraudulent practice under
5 9 this section is personally liable for the amount of
5 10 assistance, payment, or other benefit fraudulently received.
5 11 The amount of the assistance, payment, or other benefit may be
5 12 recovered from the offender or the offender's estate in an
5 13 action brought or by claim filed in the name of the state and
5 14 the recovered funds are appropriated to the department to be
5 15 used for state child care assistance under section 237A.13.
5 16 The action or claim filed in the name of the state shall not
5 17 be considered an election of remedies to the exclusion of
5 18 other remedies.

5 19 3. The department shall adopt rules pursuant to chapter
5 20 17A as necessary to recover overpayments of assistance,
5 21 payments, and benefits provided under this chapter. The
5 22 recovery methods shall include but are not limited to reducing
5 23 the amount of assistance, payments, or benefits provided.

5 24 Sec. 4. NEW SECTION. 237A.15 CIVIL PENALTIES == PAYMENT
5 25 OF INVESTIGATION COSTS.

5 26 If a person receives under this chapter assistance,
5 27 payment, or other benefit to which the person was not entitled
5 28 or for which the person was not eligible, the person's
5 29 liability for civil penalties and investigation costs shall be
5 30 determined in accordance with section 10A.404.

5 31 Sec. 5. NEW SECTION. 239B.14A CIVIL PENALTIES == PAYMENT
5 32 OF INVESTIGATION COSTS.

5 33 If a person receives under this chapter assistance or
5 34 another benefit to which the person was not entitled or for
5 35 which the person was not eligible, the person's liability for
6 1 civil penalties and investigation costs shall be determined in
6 2 accordance with section 10A.404.

6 3 Sec. 6. NEW SECTION. 249.11A CIVIL PENALTIES == PAYMENT
6 4 OF INVESTIGATION COSTS.

6 5 If a person receives under this chapter payment to which
6 6 the person was not entitled or for which the person was not
6 7 eligible, the person's liability for civil penalties and
6 8 investigation costs shall be determined in accordance with
6 9 section 10A.404.

6 10 Sec. 7. NEW SECTION. 249A.8A CIVIL PENALTIES == PAYMENT
6 11 OF INVESTIGATION COSTS.

6 12 If a person receives under this chapter assistance or
6 13 payment for medical assistance or payment for services or
6 14 merchandise under this chapter to which the person was not
6 15 entitled or for which the person was not eligible, the
6 16 person's liability for civil penalties and investigation costs
6 17 shall be determined in accordance with section 10A.404.

6 18 EXPLANATION

6 19 This bill relates to public assistance benefits received by
6 20 persons who were not entitled or eligible to receive the
6 21 benefits. The bill includes requirements for establishing
6 22 liability for civil penalties and recovery of investigation
6 23 costs from such persons under the following Code chapters:
6 24 chapter 234, relating to child and family services, including
6 25 child welfare services and food programs; chapter 237A,
6 26 relating to child care services; chapter 239B, relating to the
6 27 family investment program; chapter 249, relating to state
6 28 supplementary assistance; and chapter 249A, relating to the
6 29 medical assistance program.

6 30 In new Code section 10A.404, the bill provides authority as
6 31 applicable under each of these chapters to establish liability
6 32 for a person who receives a benefit, defined as a service,
6 33 payment, merchandise, or other assistance to which the person
6 34 was not entitled or for which the person by rule was not
6 35 eligible, in addition to any other penalty or payment under
7 1 law. The liability has two components: a civil penalty and
7 2 the costs of the investigation concerning the matter incurred
7 3 by the department of inspections and appeals.

7 4 The threshold for applying this liability to a recipient is
7 5 whether the recipient received more than \$1,000 of benefits to
7 6 which the recipient was not entitled or eligible. The civil
7 7 liability limit for a recipient is three times the value of
7 8 such benefit and the liability for investigation costs is
7 9 limited to \$500. The civil penalty for a provider of service,

7 10 merchandise, or other assistance who received a benefit to
7 11 which the provider was not entitled or eligible for is a
7 12 minimum of \$5,000 for a provider who received unentitled
7 13 benefits of \$20,000 or less. If the provider received
7 14 benefits the provider was not entitled to in excess of
7 15 \$20,000, the civil penalty is at least 25 percent of the
7 16 amount of the benefits the provider was not entitled to, not
7 17 to exceed three times the value of such benefit.

7 18 The liability may be established by a state or federal
7 19 court in a criminal or civil proceeding or pursuant to an
7 20 administrative finding. Otherwise the office of the attorney
7 21 general or county attorney is authorized to initiate the
7 22 proceedings in the county in which the person received the
7 23 benefit.

7 24 If a judgment or finding is issued in a criminal, civil, or
7 25 administrative proceeding that involves benefit programs
7 26 administered by the state, a rebuttable presumption arises
7 27 that the person is liable for the civil penalties and costs of
7 28 investigation. The presumption may be rebutted by showing
7 29 clear and convincing evidence that the person was eligible for
7 30 what was received.

7 31 The departments of human services and inspections and
7 32 appeals are authorized to adopt rules to implement the bill's
7 33 provisions.

7 34 In addition, new Code section 237A.14 establishes a
7 35 fraudulent practice crime involving persons obtaining child
8 1 care assistance, payments, or benefits. The state is
8 2 authorized to recover moneys to compensate for the
8 3 fraudulently obtained assistance, payment, or benefit, and
8 4 recovered moneys are appropriated to the department of human
8 5 services for the state child care assistance program.

8 6 LSB 1314DP 80

8 7 rh/pj/5.1